

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 507 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

JASUBHAI @ JAHO FATESINH MAHIDA

Versus

DISTRICT MAGISTRATE

Appearance:

MR ANIL S DAVE for Petitioner

MR KT DAVE AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 06/03/2000

ORAL JUDGEMENT

#. The District Magistrate, Kheda at Nadiad passed an order detaining the present petitioner under the provisions of Gujarat Prevention of Anti Social Activities Act, 1985 ('PASA' for short) on 12th August, 1999. The ground of detention indicate that the

detaining authority took into consideration three registered offences of prohibition under the Prohibition Act against the petitioner. The authorities also taken into consideration the statements of the five anonymous witnesses whose identity has not been disclosed under the provisions of Section 9(2) of the PASA Act. The authority recorded that the petitioner is found to be a bootlegger and his activities are detrimental to the public order, that taking action against the petitioner under the ordinary laws may not as efficacious as detention under PASA as the petitioner is required to be immediately prevented from pursuing his illegal activities, and therefore, detention under PASA is only remedy which could be resorted to.

#. The petitioner has challenged the order of detention on various counts. But has mainly relied on the lapse of non verification by the detaining authority of the statements of the anonymous witnesses.

#. Ms. Banna Datta, learned advocate appearing for the petitioner has restricted her arguments to the above ground. She submitted that the statements of the anonymous witnesses have been taken into consideration by the detaining authority while passing the order. The detaining authority has also exercised the powers under Section 9(2) of the PASA Act, but the subjective satisfaction recorded by the detaining authority has been vitiated for the reasons that he has not subjectively verified, the statements of the anonymous witnesses in respect of incidents narrated by them and the apprehension of the fear expressed by the witnesses and therefore, the satisfaction recorded by the detaining authority for the need for exercise of powers under Section 9(2) of PASA Act cannot be considered as genuine. This would vitiate the order of detention and therefore, the same may be quashed and set aside.

#. Mr.Dave, learned AGP has opposed this petition. He has drawn the attention of this Court to the fact that the statements have been verified by the Sub Divisional Magistrate.

#. Looking to the grounds of detention, it is indicated that the detaining authority has exercised the powers under Section 9(2) of PASA Act in respect of all five anonymous witnesses. The correctness and genuineness of the incidents and fear expressed by the witnesses have not been verified subjectively by the detaining authority. The detaining authority has placed on reliance on the verification made by the Sub Divisional

Magistrate. However, there also the detaining authority has committed lapse of exercising of powers under Section 9(2) in respect to all the five witnesses as against the verification of only three witnesses by the Sub Divisional Magistrate, and therefore, exercise of powers under Section 9(2) of PASA Act qua witnesses No ; 4 & 5 is absolutely without verification as can be seen from grounds of detention itself. This would vitiated the subjective satisfaction and exercise of powers under Section 9(2) of PASA Act and ultimately, the order of detention. This will in turn affect the right of the detenu of the making an effective representation contemplated under Article 22(5) of the Constitution of India.

#. The petition, therefore, deserves to be allowed and the same is allowed for the reasons stated above. The order of detention passed by the District Magistrate, Kheda dated 12-8-99 against the petitioner JASUBHAI JAHO FATESINH MAHIDA is hereby quashed and set aside. The petitioner - JASUBHAI @ JAHO FATESINH MAHIDA is ordered to be set at liberty forthwith, if not required in any other case. Rule to that is made absolute. No costs.

Date : 6-3-2000 [A.L.Dave, J.]

#kailash#